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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Crackdown on Freedom of Expression and Assembly in Malaysia*

There has been a serious regression in Malaysia's democratic space in 2015, with the government's crackdown on freedom of speech and assembly, predominantly through the use of the Sedition Act 1948, Peaceful Assembly Act 2012, and various sections of the Penal Code.

Freedom of speech and expression is enshrined in Article 10(1)(a) of the Federal Constitution of Malaysia. However, the guarantee of such a right is severely limited and qualified by broad provisions in Article 10(2)(a), which stipulates that Parliament may impose *"such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof"*. Similarly, the freedom of assembly is enshrined in Article 10(1)(b) of the Constitution, but is restricted through Article 10(2), 10(4) and Article 149 of the Constitution.

But it is arguable whether the action done in exercising these constitutional human rights do pose threats to national security, justifying their restriction, as none of them intended to incite violence or hatred against the government or any other party.

Alarming increase in the use of the Sedition Act to crackdown on freedom of expression

At the United Malay National Organisation (Umno) General Assembly in November 2014, Malaysian Prime Minister Najib Razak conceded to extremists in Umno and reversed his public promises to repeal the Sedition Act.[1] On 27 September 2014, Najib Razak not only reneged on his pledge to abolish the Act, but announced that he would *"fortify"* it to protect Islam and other religions and address calls for secession in the East Malaysian states of Sabah and Sarawak.

The announcement was a shock as it contravened his 2012 electoral pledge[2] to repeal the law as part of his legislative reforms to uphold civil liberties. Najib again attested to this promise during a BBC News interview in July 2013[3]. A stark increase in the use of the Sedition Act from 2012 to 2015 has seen 71 people investigated, 53 charged, and 5 convicted under the act.

In September 2014, student activists Safwan Anang and Adam Adli were convicted of sedition and sentenced to 10 and 12 months prison respectively for speeches they made about alleged electoral fraud, calling for street protests at a post-election rally in May 2013.

On 10 February 2015, Opposition leader Anwar Ibrahim was jailed for five years on what many believe to be politically motivated trumped-up charges of sodomy. Activists who took to Twitter to express their dissatisfaction were arrested and questioned by police. Those targeted included cartoonist Zulkiflee Anwar Haque, MP Nga Kor Ming, MP Rafizi Ramli and Parti Sosialis Malay (PSM) Secretary-General S. Arutchelvan. The IGP later defended his harassment on Twitter and admitted that he was targeting politicians and NGO leaders with large Twitter followings.

Since 2009, political cartoonist Zulkifli SM Anwarul Haque, better known by his pen name Zunar, has been investigated and arrested under the Sedition Act by the government for producing comics that were allegedly

1 The Malaysian Insider – Sedition Act stays, says Najib, 27 November 2014 - http://www.themalaysianinsider.com/malaysia/article/sedition-act-stays-says-najib

2 The Malaysian Insider – Najib: Sedition Act to be repealed, 11 July 2012 - http://www.themalaysianinsider.com/malaysia/article/najib-sedition-act-to-be-repealed

3 British Broadcasting Corporation (BBC) News – Malaysia PM Najib Razak makes sedition pledge, 2 July 2013 - http://www.bbc.com/news/world-asia-23145379

detrimental to public order. The government's determination to persecute Zunar has extended to his printers, vendors, online service provider and book store owners, whose places of business were raided by police officers.[4]

On 3 April 2015, Zunar was charged with nine counts of sedition for tweets he wrote in February 2015 criticising the Anwar Ibrahim sodomy conviction, and faces up to 43 years imprisonment. He is awaiting trial on 7 July 2015.

On 10 April 2015, Malaysian lawmakers passed controversial amendments to the Sedition Act that pose an even greater threat to freedom of expression. The amendments removed two categories from the definition of seditious tendency - *'exciting disaffection against the government and against the administration of justice'* However, the amendments added the offence of *'stirring up ill-will, hostility or hatred on the grounds of religion'* The broad definitions for "seditious tendency" remain arbitrary and have the effect of capturing any legitimate and constructive criticism against the establishment.

The amended Act creates "aggravated" sedition for offences that lead to bodily harm or property damage. The 'importing seditious publications offence' was replaced with the 'propagating seditious publications offence'. Many fear the vague definition of "propagating" will mean the end of the relatively free use of social media in Malaysia to criticise the government. Home Minister Ahmad Zahid Hamidi's statements that the amendments were meant to handle "threats" on social media substantiate this.[5] The Act has removed judicial discretion in imprisonment and provides for mandatory jail terms of between three and seven years for those found guilty.

Comments deemed seditious include law Professor Dr Azmi Sharom's remarks on a political crisis[6]; journalist Susan Loone's reporting on a statement by a politician in an interview[7]; and MP Nurul Izzah's parliamentary speech on her father Anwar Ibrahim's imprisonment.

Recent crackdown on freedom of assembly

Since 2008, Malaysian civil societies have increasingly organised peaceful street protests to highlight the urgent need for electoral reform and human rights despite legislation such as the Police Act 1967 that required protestors to apply for a permit to hold marches and rallies under Section 27(2) or face fines of between RM2,000 and RM10,000 or one year in jail.

The provisions under the Police Act restricting public assemblies were repealed, but were replaced by the Peaceful Assembly Act 2012 which has proved to be more restrictive[8] .According to a booklet produced by the information

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4 Malaysiakini – Ministry appeal against lift of ban on Zunar's books, 11 November 2014 - http://www.malaysiakini.com/news/280153

5 The Malay Mail Online – Sedition Act expanded to protect you on social media, Zahid tells Malaysians, 11 April 2015 - http://www.themalaymailonline.com/malaysia/article/sedition-act-expanded-to-protect-you-on-social-media-zahid-tells-malaysians

6 The Malay Mail Online – UM law professor latest caught in Putrajaya's sedition dragnet, 1 September 2014 http://www.themalaymailonline.com/malaysia/article/um-law-professor-latest-caught-in-putrajayas-sedition-dragnet

7 The Malaysian Insider – Journalist Susan Loone arrested in Penang over 'seditious' article, 4 September 2014 -

http://www.themalaysianinsider.com/malaysia/article/journalist-susan-loone-arrested-in-penang-over-seditious-article

8 New Mandala – Malaysia Assembling the Peaceful Assembly Act, 6 December 2011 - http://asiapacific.anu.edu.au/newmandala/2011/12/06/malaysia-assembling-the-peaceful-assembly-act/

Department[9], it is meant to prevent street protests such as the 28 April 2013 Bersih 3.0 protests that demanded electoral reform.

Since its tabling, it has been used to selectively prosecute Opposition politicians and activists who take part in or are alleged to have organised street protests.[10] Among the provisions in the Peaceful Assembly Act that restrict freedom of assembly is the requirement for organisers to send written notice of a public assembly to the police 10 days prior to the event or it will be an offence under Section 9(5) of the Act.

But on 25 April 2015 the Court of Appeal ruled that it was unconstitutional to criminalise protests that breached the 10-day notice requirement.[11] To date, however, a total of 49 people have been arrested and investigated under the Peaceful Assembly Act including state assemblyperson Nik Nazmi[12]. A further 87 people have been charged, including 50 activists protesting the newly introduced Goods and Services Tax[13].

The government has resorted to the use of Section 143 of the Penal Code to detain participants and organisers of protests for unlawful assembly. Most recently, there was a crackdown on participants, opposition politicians and social activists who took part in the 1 May 2015 Workers Day rally to protest the recently introduced Goods and Services Tax (GST). Police detained prominent lawyer and human rights' activist Ambiga Sreenevasan; MPs Anthony Loke and Dr Hatta Ramli; and PSM secretary-general S. Arutchelvan in connection with the protest.[14] Twenty-three youths were also remanded for four days over the same protest under Section 143.[15]

Recommendations

The use of the Sedition Act and Peaceful Assembly Act seriously threaten freedom of expression and assembly in Malaysia. We entreat the UN Human Rights Council to make urgent representations to the Malaysian government urging them to:

- Cease all human rights violations occurring in Malaysia and urge an immediate end to the harassment, persecution, and arbitrary arrest of those exercising their freedom of expression and assembly

9 Deaprtment of Information Malaysia – Akta Perhimpunan Aman 2012 (Peaceful Assembly Act 2012), March 2013 - https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC0QFjAC&url=http%3A%2F%2Fwww.penerangan.gov.my%2Findex.php%2Fbm%2Fe-book%2Fdoc_download%2F330-akta-perhimpunan-aman-2012&ei=LMVQVfl7z5O4BP-dgaAP&usg=AFQjCNFEOl2XyshDcla8y1wwj60pLafgxA&sig2=2NpS0dXQA6bSALnm5vtoUw&bvm=bv.92885102,d.c2E

10 The Malaysian Insider – Lawyers cry foul as 3 more activists are to be recharged under assembly law tomorrow, 8 May 2014 - http://www.themalaysianinsider.com/malaysia/article/lawyers-cry-foul-as-3-more-activists-are-to-be-recharged-under-assembly-law

11 The Malay Mail Online – Assembly law cannot criminalise public gatherings, court rules, 25 April 2014 - http://www.themalaymailonline.com/malaysia/article/assembly-law-cannot-criminalise-public-gatherings-court-rules

12 Malaysiakini – PKR's Nik Nazmi detained over Kita Lawan, 8 March 2015 - http://www.malaysiakini.com/news/291305

13 The Malaysian Insider – 50 charged over staging anti-GST protest, 23 April 2015 - http://www.themalaysianinsider.com/malaysia/article/50-charged-over-staging-anti-gst-protest

14 The Malaysian Insider – Ambiga, 3 others freed after a night in lock-up, 2 May 2015 - http://www.themalaysianinsider.com/malaysia/article/ambiga-3-others-freed-after-a-night-in-lock-up

15 The Malaysian Insider – Remand extended a day for 23 youths held over Workers Day rally, 4 May 2015 - http://www.themalaysianinsider.com/malaysia/article/remand-extended-a-day-for-23-youths-held-over-workers-day-rally

- Repeal the 1948 Sedition Act and amendment or repeal all laws which are not in line with international standards, including the 2012 Peaceful Assembly Act; the 1972 Official Secrets

  Act; and the 1984 Printing Presses Publications Act.

- Drop all sedition and anti-peaceful assembly charges with immediate effect

- Revise the Malaysian Communications and Multimedia Act to safeguard freedom of information and expression on the internet

- Extend an immediate invitation to the United Nations Special Rapporteurs on Freedom of Assembly and Association and Freedom of Expression to conduct an urgent country visit to Malaysia.

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*Suara Rakyat Malaysia (Suaram), NGO without consultative status, also shares the views expressed in this statement.